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SOME SUGGESTED CHANGES IN THE CONSTITUTION OF MICHIGAN

IN April of last year the proposition to call a convention to revise the Constitution of Michigan was adopted by a substantial popular vote. The approach of the time when this Convention will be called suggests the advisability of discussing at least some of the changes which may be proposed. For while the full debate on proposed changes must take place in the Convention and after its work is submitted for popular ratification, it is important that some definite ideas should be publicly considered even before the delegates are elected.

At the outset it should be understood that if the present State Constitution followed the models of the National Constitution and the earlier state constitutions in dealing only with the fundamental organs of government, there would be little need for any general revision. And it may be admitted that no radical changes in the fundamental principles of American government will be adopted or perhaps even seriously discussed.

But the Constitution of Michigan, like that of most of the states, is much more than a document of fundamental principles. It contains in addition to these a large number of provisions that are not constitutional in the strict and older sense of that word. It includes many details of administrative organization, and not a few items of substantive law. And it is with reference to these provisions, where changes from time to time are essential, that alterations will be proposed and considered.

From a theoretical point of view, the question might be discussed whether it would not be advisable to return to the earlier system, and reduce the Constitution to a body of fundamental principles. But in face of the pronounced tendency towards an increase in direct popular participation in the government, and the distrust of state legislatures, such a discussion would be of purely academic interest. And it may be taken for granted that the revised Constitution will deal with many matters other than the fundamental framework of government and the guarantees of individual liberty. Indeed it is probable that in some respects the revised Constitution may go further than the present in restricting the powers of the legislature.

MUNICIPAL GOVERNMENT.

One of the most important subjects that will undoubtedly be considered, and one that has already been discussed to some extent, is that of the government of cities and their relation to the state. In

view of the present importance of municipal government it is somewhat surprising to discover, that with all its details on other matters, the present Constitution contains nothing whatever in reference to cities and their government. But this lack is more readily understood when it is recalled that when the present Constitution was adopted municipal government was of very little importance. In 1850 Detroit had a population of but 21,000, Grand Rapids and Jackson were villages of less than 3,000, and even Saginaw and Bay City were not in existence.

At the present time Detroit has a population of over 300,000; there are five other cities with a population of more than 25,000; twenty-six cities have over 8,000; and fifty-five have more than 4,000 inhabitants. Moreover the scope of municipal activities and the importance of municipal government have developed even more rapidly than is indicated by the increase in population. Detroit in 1860 spent only $200,000 a year, or $4.50 per capita. Today it spends over $6,000,000, or $20.00 per capita. Grand Rapids spends nearly $2,000,000 a year. While smaller cities spend almost as much in proportion to population. For example, Owosso, with 9,000 inhabitants, had an expenditure of $205,000 in 1903. The total expenditure of the cities with more than 8,000 population is about $18,000,000 a year, more than four times the expenses of the state government.

This changed situation certainly seems to call for a constitutional recognition of cities, and for a definition of their powers and their legal relation to the state. At the present time cities have no clearly established constitutional rights, and are entirely at the mercy of the legislature, which has the power to abolish their political existence. In practice, by the custom of special legislation for particular cities, the decision on all important questions of municipal policy rests, not with the local authorities, but with the legislature. The time of that body is absorbed by a mass of local measures, which are perforce enacted without due consideration. And as a result "ripper bills" for partisan political purposes have been enacted; while the law on municipal government is in so confused and chaotic a state as to defy any attempt at systematic statement or clear knowledge of its meaning.

Obviously one of the leading changes that is demanded is to prevent the abuses of special municipal legislation. For this purpose several methods have been adopted in different states. In some, special municipal legislation is entirely prohibited; and in Ohio this prohibition is now enforced, and a uniform municipal code applies to every city in that state. This may seem too drastic a

remedy; and if the legislature is to continue to regulate minutely the details of municipal government, it will be difficult to establish a uniform system that will be adapted to both large and small cities. But the municipal laws of Illinois show that it is possible to enact general laws for cities of all sizes, by leaving the details of organization to the local authorities.

Another method of avoiding some of the abuses of special legislation is adopted in New York. Here special city bills after passing the legislature must be sent to the mayor and council of the city concerned; and if disapproved by the local authorities must be repassed by the legislature before becoming law. This procedure opposes some obstacles to the hasty passage of objectionable legislation; but it does not prevent even partisan measures from being enacted, when the state legislature is politically opposed to a city government.

Still another method adopted in a number of states west of the Mississippi river is to authorize cities to frame and adopt their own charters. This method is now authorized in Missouri, Minnesota, Colorado, California and Oregon; and has been utilized by many cities in these states. It eliminates the evils of legislative interference; but it accentuates the confusion and uncertainty of the law on municipal government, and promotes litigation and delay in carrying out important public undertakings.

All of these plans, and probably others, for dealing with the problem of special municipal legislation will undoubtedly be proposed and discussed in the convention. And it can at least be agreed that some modification of the existing situation should be made.

Another question that may be raised is whether the Constitution itself should not establish some features of municipal organization. Since the principal county and town officers are given a constitutional basis, there would seem to be a logical reason for recognizing also such established municipal institutions as the mayor and city council. And the Constitution might establish the principle that all municipal elections should be separated from state and national elections.

Of more importance is the question of the powers that should be conferred on municipal corporations. The present system of enumerated powers strictly construed by the courts is the most potent factor in promoting at every session the flood of special bills conferring additional powers on cities. It is probably too much to expect that the convention will make so radical a change as to adopt the principle followed in the countries of continental Europe, that a

city may do anything not inconsistent with the general laws and administrative regulations of the central government. But at least some broader grants of power in more general terms should be conferred. In particular the *authority* to own and operate such public utilities as water works, lighting plants, and street railways should be granted. Whether any particular city should act under such authority would then be a question to be determined by each local community for itself.

Moreover in order to make the powers granted effective there must be adequate financial authority. At the same time the rights of property owners should be protected; and there should therefore be a limit placed on the power of taxation and the power to issue bonds that may become a lien on the taxes. But provision could be made by which mortgage bonds on revenue producing public utilities, such as the proposed street railway certificates in Chicago, could be issued outside of the ordinary debt limit.

Thus far attention has been called to measures for enlarging the powers of cities. But the dangers of municipal misgovernment should also be recognized; and safeguards adopted for protecting the cities from abuse of their powers by municipal officials. There should be restrictions on the power of city authorities to alienate the streets or other public property; and some regulation of the procedure in granting franchises to private corporations. There is need for a great improvement in the accounting methods of most of our cities; and the Constitution might well require a uniform system under state supervision.

COUNTY GOVERNMENT.

Little attention has been given to the question of county government; and it has been too readily assumed that our present system is satisfactory, although recent events in Michigan may well serve to remove the complacency that exists. Conditions in Michigan are perhaps little worse than in many other states. But an analysis of our county system in the light of modern ideas of political organization will show serious defects. In brief, it may be said that there are too many elective county officers for the voters to exercise any real power of selection; that the county lacks and needs an effective and responsible chief executive, corresponding to the state governor and city mayors; and that there is a serious danger in combining the powers of taxation, appropriation and spending of money in the hands of one body,—the board of supervisors.

A realization of some defects in the prevailing organization is indicated by the recent constitutional amendments authorizing the

establishment of boards of auditors in some counties. But this system of special legislation is far from adequate to meet the needs of the situation. And there must be a comprehensive discussion, and perhaps some radical modifications of the provisions in regard to county government.

The precise changes that should be made will require much careful consideration. And the writer here will only venture to give his personal opinions, after a considerable study of this subject.* The elective officers might well be reduced to the sheriff, county treasurer and supervisors. The sheriff could be restored to his historical position as chief county officer, by giving him the power of appointing other county officials and perhaps a veto on the acts of the supervisors. The supervisors through their powers of taxation and appropriation would continue to exercise a financial control over the county expenditure. Prosecuting attorneys might be appointed by the attorney-general or the governor (as they were under the first state constitution), as a means of exercising a needed state supervision over the county officials, who are for the most part still considered in law as agents of the state government.

STATE ADMINISTRATION.

One of the most absurd provisions in the present Constitution is the article specifying the salaries of state officers. The salaries thus provided, more than fifty years ago, by a convention economical beyond measure even for that time, are everywhere recognized as out of all proportion to the present needs and ability of the state. And the ridiculous anomaly is presented of the deputies in the various offices receiving double and more than double the salaries of their chiefs. The salaries paid state officers in Michigan are lower than in any other state of the Union.

It should take little reflection to realize that the proper scale of salaries for public officers is necessarily a variable factor, and for that reason is not adapted for constitutional regulation. The whole article should be eliminated. To prevent any possible abuse, it might be provided that alterations in the salaries of elective officials should take effect only at the end of the term for which the legislature making the change was elected.

But other changes of a more positive nature are needed in regard to the organization of the state administration. At present this is utterly lacking in systematic arrangement and effective responsi-

*Cf. J. A. Fairlie: Local Government in Counties, Towns and Villages. The Century Co., 1906.

bility. There is a rather numerous list of elective officers, most of them of too little importance to arouse popular interest. And there is a more numerous list of appointive officers and boards of varying importance. But each office is entirely independent of the others; and there is no official relation between bureaus whose work is most closely related.

A good deal of improvement could be effected by statutory legislation. But the administrative officers provided for in the Constitution prevent a thorough reform without constitutional changes. And the best results would be attained by providing in the Constitution for the principal departments.

There should, for example, be a department of finance, corresponding to the national department of the Treasury, which should include all of the various financial bureaus. There should be a department of corporations, combining the functions of the present railroad, banking and insurance bureaus. The Secretary of State could be made an officer of importance by giving him control over the many inspectors and other minor officers, making him, in a sense, the head of the state police administration.

With these and other changes combining the two score and more petty state bureaus into a half a dozen executive departments, there would be needed some revision in the list of elective state officers. Certainly no more than the heads of the chief executive departments should be elective. And it is at least a question whether it would not be advisable to return to the older method which is still followed in the national government, and allow the governor to select his own cabinet. It might be well, however, to leave the head of the finance department an elective officer.

The two year term which applies to most of the state officers at present is too short to carry out effectively any definite policy or to permit of adequate efficiency in the administration. Many states, notably Pennsylvania and Illinois, give the governor and other state officers a four year term, and the tendency of recent constitutional changes is distinctly in the direction of longer terms. With the more complicated nature of the state government resulting from the development of the state, a four year term for the governor and principal state officers would seem to be as advisable as for the principal executive officers in the national government. For the less important officers an indefinite tenure would aid in increasing still further the efficiency of the administration.

The movement for the abandonment of spoils politics and patronage appointments in the public service is making rapid headway. Two years ago the neighboring states of Wisconsin and Illinois

joined Massachusetts and New York in establishing the merit system. And it is time Michigan took its place in this work.

To regulate effectively appointments to the public service will require statutory legislation, which could be enacted under the present Constitution. But the necessary statutes will be hastened and made more secure by a statement of general principles in the Constitution, similar to that adopted in the New York Constitution of 1894. And this brief clause of the New York Constitution is well worth quoting in full, for the consideration of those who will have the revision of the Michigan Constitution in hand. It reads as follows:

"Appointments and promotions in the civil service of the state, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness, to be ascertained, *so far as practicable,* by examinations, which, so far as practicable, shall be competitive. * * * Laws shall be made to provide for the enforcement of this section."

THE LEGISLATURE.

Some results of the present methods of representation in the State Legislature can hardly be considered satisfactory to the unbiased student of political conditions. Michigan offers an extreme illustration of the results possible under a strict application of the small district system of representation. The dominant party, which includes about two-thirds of the electors, regularly returns almost the entire membership in the legislature; while the leading minority party, although showing considerable strength in the state as a whole, has utterly insignificant representation even in this branch of the state government.

It is perhaps too readily taken for granted that the party system is an inevitable and on the whole a satisfactory feature in popular governments. And the question might fairly be asked whether the attempt should not be made to eliminate at least the national parties from state political contests. But no practical method of securing this result has yet been proposed.

It does not follow, however, that the results under the present system are satisfactory, or are the best that can be attained. These results fall very far short of meeting the conditions under which the party system is justified. One of the principal arguments in support of the party system is that it provides an organized opposition in the representative legislature, which can criticize effectively the mistakes of the party in power, and at the same time offers an alternative group of men trained in public affairs who can take

control of the government when the party in power loses the confidence of the people. But this organized opposition party and alternative group of public men cannot be said to have any real existence in the Michigan legislature. And popular control of the government has had to rely on internal factional contests within the dominant party.

If it be assumed that members of the state legislature will continue to be elected on the basis of their allegiance to national parties, there could be at least a fuller representation of opinion if the balance of parties in the legislature more nearly corresponded to their relative strength among the voters. Various plans for securing more nearly proportional representation have been devised. But most of them make the process of election rather complicated, and tend to strengthen the hands of party managers and weaken the influence of independent voters. The cumulative vote used for the election of representatives in the Illinois legislature is one of the simplest methods and is effective in securing a fair representation from the leading parties. Belgium has made the most serious attempt to secure proportional representation. A discussion of these and other methods could profitably be had in the convention, which might lead to an improvement on existing conditions in Michigan.

Another weakness in the Michigan legislature has been the lack of members with adequate experience in their duties. Two-thirds of each legislature is composed of new members; and very few members serve for more than two terms. Under these conditions it is not surprising that many of the statutes enacted are clumsily drafted and conflict with each other, causing unnecessary litigation and delay in the execution of the laws.

Some improvement in these matters could be effected if the members of the State Senate were elected for four years, one-half retiring each second year. This would insure a large element of experienced legislators in the upper house, which would have a more definite responsibility in formulating the details of legislation with a due regard to established customs, clearness of expression, and legal validity.

It may be objected that this would reduce the popular control over the upper house. But the experience of Michigan with the Senate in its present form indicates that short terms and frequent rotation is no guarantee against the control of private interests. And the longer term would promote the election of men of larger ability who would be more likely to be independent of outside control.

One of the most significant changes in American state consti-

tutions from the early documents of the eighteenth century has been the development of limitations on the legislature. These limitations consist both in restrictions on the authority of the legislature, and in regulations as to the procedure to be followed in enacting laws. The Michigan Constitution contains many provisions of both classes, such as were commonly established by 1850. But most states which have revised their constitutions since that time have added very largely to the list of limitations. And it is safe to say that additional restrictions will be proposed in the new Michigan Constitution. Some of the changes already suggested will serve indirectly to limit the power of the legislature. But in addition to such, there is certainly needed some further restrictions on special legislation of all kinds as well as special municipal laws.

The passage of special bills is in direct conflict with the fundamental functions of the legislature, which is to enact laws of general application. In a primitive community the powers of government are not clearly dissociated; and it is not surprising that legislative bodies should busy themselves with many specific details of administration. But Michigan has reached a stage of political development where a differentiation between general legislation and specific acts of administration should be recognized. If the legislature is to continue to spend its time in dealing with the latter, the more important general laws are bound to suffer. And in the interest of better general legislation, special laws of all kinds ought to be closely restricted.

DIRECT LEGISLATION.

Another and more far-reaching proposed limitation on the authority of the legislature is to incorporate in the Constitution provisions for a popular referendum on its acts, and authorizing laws to be initiated and adopted by popular vote without action of the legislature. This popular Initiative and Referendum is already established in Switzerland and in Oregon; and represents the extreme demand for direct democratic government.

It is not always recognized that with the expansion of the state constitutions and their frequent amendment, there is already a considerable body of direct legislation in this country. And the Michigan Constitution gives distinct evidence of this tendency, even to the recent enactment of special laws by constitutional amendment. The principle involved in this proposed legislation is not, therefore, altogether novel. But it must be noted that the indefinite extension of the method of direct legislation is likely to involve radical changes in the character of the government.

On the one hand, if all acts of the legislature are to become liable to a popular referendum, it seems probable that the legislature will lose a good deal of the sense of responsibility which still attaches to it. Members will vote for measures, as they have done for some proposed amendments to the Constitution, without considering their merits, but simply to leave the decision to the voters. At the same time there are probably many voters—like one candidate for an important state office in Michigan—who vote affirmatively on any proposition submitted by the legislature, in the belief that it has been endorsed by that body.

On the other hand the popular right of initiative for complicated statutory measures is liable to result in even more poorly drafted laws than under existing conditions. For laws proposed in this way there would be no adequate opportunity for amendment and revision of their details, which constitute the most important stage in the process of legislation. If the legislature were authorized to amend such laws, it would probably hesitate to alter a measure endorsed by a popular vote; or if it did make serious amendments, the principal object of the system of direct legislation might easily be nullified.

In view of these difficulties, it may be suggested that, if any change is needed, an adequate provision to meet public demands which are not voiced in the legislature would be secured by authorizing a popular initiative for amendments to the State Constitution. Even such a provision should require a very substantial proportion of the voters in support of a proposed amendment before requiring it to be submitted for adoption; and the process of initiating such amendments should be carefully regulated to prevent fraud and other abuses.

TAXATION.

Another article of the Constitution where important changes have been proposed by Governor Warner is that dealing with the distribution of the taxes from railroad and other corporations. At present the income from these taxes goes entirely to the primary school interest fund, as did the former specific taxes. The income under the present system of taxation is vastly greater than was anticipated when this fund was established. The result is that, while the state collects from these corporations enough to pay all the expenses of the state government, it must pay this to the local school authorities, and then raise for its own uses a similar sum by direct taxation. This, to say the least, involves a large amount of useless labor, and complicates the financial accounts of the state.

Several of the eastern states now collect all, or practically all, of the revenue for state expenses from corporation and other taxes paid directly to the State Treasury; and no longer use the direct property tax for state purposes. This segregation of state and local revenue has many advantages; and is strongly supported by leading economists and students of taxation throughout the country. And the possibility of securing this result is now before the people of Michigan.

Governor Warner has, however, proposed a partial change from the existing methods. He urges that the income from the corporation taxes be used as a general educational fund, for the state educational institutions as well as for the primary schools. This would reduce the state general property tax to some extent; but would not do away with it entirely.

This latter plan may be presented as a special constitutional amendment at the April election. But unless the question is determined at that time, careful attention should be given to the whole matter in the constitutional convention.

Doubtless a good many other changes in the Constitution will be proposed in addition to those mentioned in this article. But enough has been said to indicate that there are many important changes to be considered by the convention; and that the revision of the Constitution will call for a large volume of serious and difficult work. To do this work wisely and effectively will call for the best ability there is in the state. And it is to be hoped that the importance of the occasion will be realized in the character of those chosen as members of the convention.

One final suggestion may here be offered with reference to the organization of the convention. The Constitution of 1850, even as originally framed, lacked a good deal in clearness of expression and orderly arrangement; while the many amendments adopted have added a good deal to these defects. It is therefore to be hoped that the revised Constitution will show the results of more careful attention to questions of expression and systematic presentation. And for this purpose it would be well if the convention will follow the precedent of that great convention which framed the Constitution of the United States, by providing at an early date for a Committee on Style. To such a committee should be referred all clauses of the Constitution as adopted, so as to articulate the different parts into an organic whole, and at the same time to see that the meaning of the convention is voiced in language that is clear, forcible and unambiguous.

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